

Office Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 104

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY
COMMISSIONERS OF THE STATE OF NEW JERSEY,
Appellants,

v.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD
COMPANY, UNITED STATES OF AMERICA, AND INTER-
STATE COMMERCE COMMISSION, *Appellees.*

On Appeal from the United States District Court,
for the District of New Jersey

**REPLY TO STATEMENT OF APPELLEE NEW YORK,
SUSQUEHANNA AND WESTERN RAILROAD
COMPANY OPPOSING MOTION OF RAILWAY
LABOR EXECUTIVES' ASSOCIATION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE**

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Now comes the Railway Labor Executives' Association to reply to the statement of the appellee New York, Susquehanna and Western Railroad Company opposing the motion of the Association for leave to file a brief *amicus curiae* in the above-entitled case.

The Association regrets the necessity of burdening the Court with a reply to the appellee's statement and would not do so if that statement were confined solely to legal arguments. However, for the first time in the many railroad cases in which this Association has appeared before this Court, either as a party or as an *amicus*, the appellee railroad has seen fit to charge counsel for the Association with misrepresentation to the Court concerning the efforts of the Association to obtain the consent of the parties to the case to the filing of an *amicus* brief by the Association. The Association believes that it cannot let this charge go unanswered.

In its motion (page 2) the Association stated:

"The Association obtained the consent of the appellee Interstate Commerce Commission. However, consent of the attorney for the appellee railroad was requested but refused."

The paragraph in appellee railroad's statement to which the Association refers is paragraph No. 6, which reads as follows:

"6. This appellee is informed that the Interstate Commerce Commission did not 'consent' to the proposed brief *amicus curiae*, but merely stated that it had no objection thereto, and that the consent of Appellants was not requested and obtained."

The facts concerning efforts of counsel for the Association to obtain the consent of other parties to the case for the filing of an *amicus* brief by the Association are set forth in the affidavit of Mr. William G. Mahoney, a member of the Bar of this Court and a partner of the counsel signatory to the Motion of the Association, which affidavit is attached hereto as Ap-

pendix A and the affidavit of Mr. H. Neil Garson, a member of the Bar of this Court and attorney for the Interstate Commerce Commission which is filed herewith. This affidavit shows that the appellee is incorrect when it states that the Association did not obtain the consent of the Interstate Commerce Commission to the filing of such brief, but that the Association was merely informed that the Commission had no objection thereto.

Respectfully submitted,

CLARENCE M. MULHOLLAND
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*Counsel for Railway Labor
Executives' Association*

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APPENDIX A

IN THE SUPREME COURT OF THE UNITED STATES

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DISTRICT OF COLUMBIA }
 WASHINGTON } ss.

Affidavit of William G. Mahoney

WILLIAM G. MAHONEY, being first duly sworn, de-
 poses and says:

1. That he is a member of the Bar of this Court
 and a member of the law firm of Mulholland, Robie
 & Hickey, with offices at 620 Tower Building, Wash-
 ington 5, D. C.

2. That the firm of Mulholland, Robie & Hickey is retained as General Counsel for the Railway Labor Executives' Association, an unincorporated association, the membership of which comprises the chief executive officers of the 23 standard railway labor unions and the Railway Employees' Department, AFL-CIO.

3. That the Railway Labor Executives' Association instructed the firm of Mulholland, Robie & Hickey as its General Counsel to file with this Court a brief *amicus curiae* in the above-captioned proceeding.

4. That Mr. James L. Highsaw, Jr., a member of the firm, was assigned to this case and he requested your affiant to seek consent of the parties to the filing of the brief *amicus curiae*.

5. That pursuant to said request your affiant telephoned Mr. H. Neil Garson, attorney for the Interstate Commerce Commission, to determine whether that party would consent to the filing of a brief by the Railway Labor Executives' Association.

6. The substance of the conversation with Mr. Garson was that affiant asked Mr. Garson if the Commission would consent to the Association's filing a brief as *amicus curiae* in said case and that Mr. Garson stated that it would.

7. That thereafter your affiant telephoned Mr. Vincent Biunno, attorney for the appellee New York, Susquehanna and Western Railroad Company, and asked if his client would consent to the filing of a brief *amicus curiae* by the Association. Mr. Biunno in-

formed your affiant that his client would not consent to the filing of such a brief.

8. That in view of the position taken by the attorney for the appellee Susquehanna Railroad, no formal consent was presented to the Interstate Commerce Commission nor was an attempt made to secure the consent of the State of New Jersey or the New Jersey Board of Public Utility Commissioners.

Further deponent sayeth not.

WILLIAM G. MAHONEY

Subscribed to and sworn before me this 10th day of October, 1962.

Notary Public